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**Agenda Item: 2**  
**Meeting Date: November 10, 2005**

## **CALIFORNIA BAY-DELTA AUTHORITY**

October 13, 2005  
650 Capitol Mall, Bay-Delta Room  
Sacramento, California

### **MEETING SUMMARY**

#### **CALL TO ORDER AND OPENING REMARKS**

Chairman Hunt called the meeting to order at 9:10 a.m.

#### **1. INTRODUCTION / ESTABLISHMENT OF QUORUM**

**Public** – Paula Daniels, representing the Southern California Region; Susan Kennedy, representing the San Francisco Bay Region; Alfred Montna, representing the Sacramento Valley Region; Bill Jones, representing the San Joaquin Valley Region; Patrick Johnston, representing the Sacramento-San Joaquin River Delta Region; and Marc Holmes and Daniel Wheeler, Members-At-Large.

#### **Bay-Delta Public Advisory Committee Representative – Gary Hunt**

**State** – Crawford Tuttle, designee for Michael Chrisman, Secretary for Resources; Lester Snow, Director of the Department of Water Resources (DWR); Paul Stein, designee for Ryan Broddrick, Director of the Department of Fish and Game (DFG) and designee Diana Jacobs; A.G. Kawamura, Secretary for Food and Agriculture (CDFA), and designee Ken Trott; and Dave Spath, designee for Sandra Shewry, Director of the Department of Health Service.

**Federal** – Mark Limbaugh for Gale Norton, Secretary for Department of Interior; Kirk Rodgers, Regional Director, Mid-Pacific Region, U.S. Bureau of Reclamation (USBR); Mike Aceituno for Rodney McInnis, Regional Administrator, Southwest Region, National Marine Fisheries Services (NOAA Fisheries); Brandon Muncy for Colonel Ronald Light, Sacramento District, U.S. Army Corps of Engineers (USACE); Thomas Hagler for Wayne Nastri, Region IX Administrator, U.S. Environmental Protection (USEPA); and Dave Harlow, designee for Steve Thompson, Manager of California-Nevada Operations Office, U.S. Fish and Wildlife Service (USFWS).

**Ex-Officio** – Dennis O'Connor for Senator Sheila Kuehl, Chair of the Senate Natural Resources and Water Committee; and Assemblywoman Lois Wolk, Chair of the Assembly Water, Parks and Wildlife Committee, and designee Alf Brandt.

Following roll call, a quorum was established.

## **2. CLOSED SESSION. DISCUSSION OF ONGOING LITIGATION**

- **In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings, Court of Appeal, Third Appellate District, Consolidate Case Nos. C044267 and C044577**
- **Don Laub v. Gale Norton, et al., United States District Court, Eastern District of California, No. CIV-F-00-6601-OWW**

Members (except ex-officio) met from 9:15 through 10:37 a.m. in closed session.

## **3. RETURN TO OPEN SESSION AND OPENING REMARKS**

Chief Counsel Chris Stevens reported that in closed session lawyers from the State Attorney General's Office briefed members on the October 7 State Appeals Court decision in the State coordinated cases. Although it sided with the State on most issues, the Appellate Court remanded the cases to the trial court with directions to vacate the State's certification of the CALFED Programmatic Environmental Impact Statement/Environmental Impact Report and adoption of the Record of Decision, based upon certain deficiencies identified by the Court.

Mr. Stevens reported that following discussion of the case and potential implications, members unanimously adopted a motion recommending to the State Administration that it request the Attorney General's Office to petition for rehearing by the Court of Appeal and, if necessary, petition for review by the California Supreme Court.

## **4. ADOPTION OF SEPTEMBER 8, 2005 MEETING SUMMARY**

Meeting summary was adopted as submitted.

Chairman Hunt acknowledged the upcoming retirement of Dave Spath, designee for the Director of the Department of Health Services. Mr. Spath served with distinction at the Department of Health for more than 30 years and is a nationally recognized drinking water expert.

## **5. DIRECTOR'S REPORT**

Director Grindstaff reported on his recent trip to Washington, D.C. where he conducted successful meetings with members of Congress; congressional staffers; and Federal officials from the Office of Management and Budget and the Council on Environmental Quality. Director Grindstaff also acknowledged, in response to a question, that the Governor had recently appointed all new members of The State Reclamation Board.

## **6. LEAD SCIENTIST REPORT**

Deputy Director for Science, Steve Ford, provided a brief overview on program activities. He reported that the recruitment process for the new Lead Scientist was proceeding on schedule with interviews anticipated by the end of the year. A recommendation for a smaller Independent Science Board (ISB) was being prepared. Three separate science review panels were underway (OCAP, EWA, and CALSIM). CALFED also recently announced the appointment of eight new Science Fellows, each to serve a three-year term.

## **7. DESIGNATED FEDERAL OFFICER'S REPORT**

Jason Peltier reported on the presentation at the Bay-Delta Public Advisory Committee (BDPAC) meeting on October 12, 2005 regarding the revised Federal Advisory Committee Act (FACA) charter and its implications for BDPAC. He reported the following:

- There was a "high level of comfort" by BDPAC members after the presentation at the October 12 meeting
- There are no significant changes to BDPAC after the re-chartering (FACA Charter)
- FACA is important and must be adhered to strictly
- BDPAC exists to advise the Secretary of Interior
- There is a difference between "formal" and "informal" BDPAC recommendations to the Secretary of the Interior. Formal recommendations are those that directly affect Interior policy or decisions, and would be transmitted in writing by the BDPAC Chair to the Secretary. If agreed to by the Secretary, they would be conveyed by the Secretary in writing to those Interior agencies responsible for the recommended action and to the Authority and other CALFED agencies, as appropriate. Informal recommendations are those that do not directly affect Interior policy or decisions, but would result in the Secretary conveying Interior support of the recommendation to the Authority and other CALFED agencies.

## **8. REPORT FROM OCTOBER 12, 2005 WORKSHOP**

Director Grindstaff and Chairman Hunt reported that the refocusing and revitalization effort was proceeding well as reflected in the presentations at the workshop by the Little Hoover Commission, Department of Finance and KPMG. Members are very interested in this process and would like to see an independent board with fiscal powers, independent oversight and possibly permitting authority emerge from this process.

## **9. SOUTH DELTA IMPROVEMENTS PROGRAM**

DWR's Jerry Johns provided an overview of the SDIP. A Draft Environmental Impact Report (D/EIR) is due to be released in the coming weeks. Mr. Johns informed members of the two-stage process of the SDIP review which includes a review of the

physical components (configuration of the gates) and a review of the preferred operational alternatives (none of which have yet been selected). The review will be conducted in light of a full consideration of the impacts of the Pelagic Organism Decline (POD). The POD is looking at invasive species, toxics, and State and Federal water project operations as primary potential causes of the organism decline.

Members had some discussion over the treatment of the POD issue in the D/EIR. While concern was expressed to highlight this aspect of the D/EIR, the consensus was to not delay the D/EIR's release by adding additional language or requiring DWR to make any changes.

## **10. APPROVAL OF 2005-06 PROGRAM PLANS**

Authority members approved the staff recommendation and BDPAC concurrence on program plans as follows:

Conveyance – Approve  
Transfers – Disapprove  
EWA – Disapprove  
ERP – Disapprove  
Drinking Water Quality – Disapprove

Members were also informed of a motion made at the BDPAC meeting by Tom Clark, adopted by a 10 to 7 vote, to recommend to the Authority that it send a letter to the Legislature and the state Administration asking that agency commitments as specified in relevant agreements to publicly fund the Environmental Water Account be kept. Kirk Rogers, the Designated Federal Officer on BDPAC, indicated that the BDPAC's recommendation should come through the Department of Interior, which would then make a recommendation as appropriate.

## **11. ANNUAL REVIEW OF PROGRAM PROGRESS AND BALANCE**

Chairman Hunt directed that this item precede the discussion on program plans. Director Grindstaff stated that this topic will be placed on the next Authority meeting agenda as an action item. Chief Counsel Chris Stevens provided the following overview regarding the annual review of progress and balance.

State law requires the Authority, on or before November 15 of each year, to review progress in implementing the Program. If it is determined that either the "Program schedule or objective has not been substantially adhered to", a revised schedule must be prepared, in coordination with BDPAC, that will achieve balanced progress in all Program elements.

Federal law similarly requires the Secretary of Interior, on or before November 15, to review progress in implementing the Program based on consistency with the ROD and balance in achieving the goals and objectives of the Program. If it is determined that

either the Program implementation schedule has not been substantially adhered to, or that balanced progress in achieving the goals and objectives of the Program is not occurring, a revised schedule must be prepared, in coordination with BDPAC, to achieve balanced progress in all Program elements consistent with the intent of the ROD. Any written determination and revised schedule must then be included in the Annual Report, which under Federal law must be submitted by the Secretary no later than February 15 of the following year.

In sum, neither State nor Federal law requires an affirmative written statement of balance; however, a determination of substantial non-adherence to the ROD schedules or balanced progress among the Program's goals and objectives (in effect, a finding of "imbalance") would trigger the need to prepare a remedial schedule to achieve balance across all Program elements. To date, the Authority has not made such a finding, but has attempted to address identified areas of concern in the next year's program plans.

Director Grindstaff indicated that the 10-Year Action Plan called for in the Governor's May Revision, which will be brought to the Authority for action in December, will in any event lay out a refocused and balanced program with updated schedules, realistic funding targets, and identified funding sources.

## **12. ECOSYSTEM RESTORATION PROGRAM DIRECTED ACTION PROCESS**

ERP Deputy Program Manager, Rhonda Reed, announced that two public workshops on the ERP process for directed action grants of Proposition 50 funds will take place in November. The first will be held on November 3 in Sacramento, followed by one in Southern California on November 7.

## **13. ECOSYSTEM RESTORATION PROGRAM INTERAGENCY FUNDING TRANSFER**

The Authority approved Resolution 05-10-02 authorizing the Director, or designee, to sign an Interagency Agreement with the California Department of Fish and Game approving transfer of Ecosystem Restoration Program funds for an amount not to exceed \$45 million. This transfer of funds is consistent with the plan to transition implementation of the ERP to the Department of Fish and Game (as specified in State law).

## **14. BATTLE CREEK SALMON AND STEELHEAD RESTORATION PROJECT**

The Authority approved Resolution 05-10-03 recommending to the Department of Fish and Game that it proceed with awarding a grant to the U.S. Bureau of reclamation for the Battle Creek Salmon and Steelhead Restoration Project, conditioned upon completion of the environmental documents for the project, acquisition of necessary easements, and compliance with all other legal requirements.

## **15. INTEGRATED REGIONAL WATER MANAGEMENT PROGRAM PLANNING GRANTS**

The Authority approved Resolution 05-10-03 recommending that the Department of Water Resources and the State Water Resources Control Board proceed with awarding grants for the Proposition 50 Integrated Regional Water Management Grant Program – Planning Grants, which includes Integrated Coastal Watershed Management Plan grants.

## **16. PUBLIC COMMENT**

Three public comments were received on the Battle Creek Salmon and Steelhead Restoration Project.

- Eric Vaden whose family owns two ranches on Battle Creek supports the goals of the project, but does not support the project because, he states, it lacks sufficient programmatic oversight and brings with it a high risk of failure and future litigation.
- Larry Johnson spoke out against the project because of his concern for potential environmental damage.
- Paul Minasian, attorney representing the Vaden family, stated the project is not yet supported by an approved EIR, project spending is out of control and the project will involuntarily acquire land which is specifically prohibited by Proposition 50.

A final comment came from member A.G. Kawamura, Secretary of Agriculture. He expressed concern that the Authority should be paying greater attention to the California's need for critical infrastructure and how to leverage funds to address the need, particularly in light of recent natural disasters such as Hurricane Katrina and other catastrophic events.

## **17. ADJOURNMENT**

Chairman Hunt adjourned the meeting at approximately 2:30 p.m. The next Authority meeting is scheduled for November 10, 2005.